

### REMARKS

The fee for a three month extension of time and any additional fees that may be due in connection with the filing of this paper or with this application may be charged to Deposit Account No. 06-1050. If a Petition for Extension of time is needed, this paper is to be considered such Petition.

Claims 1-16, 18, 20 and 21 are pending in the application. Claim 17 is cancelled herein without prejudice or disclaimer. Claim 19, which is directed to non-elected subject matter, is cancelled herein without prejudice or disclaimer. Applicant reserves the right to file divisional applications to any non-elected or cancelled subject matter. Claims 1-9, 12-16, 18 and 20 are amended. Claim 2 of Group II and claims dependent thereon (claims 12-15, 18 and 20), as amended conform with the election of Group I. Claims 1-9, 12-16 and 18 are amended for clarity, and claim 20 is amended to correct claim dependency. Basis for the amendments can be found in the specification and claims as filed. Claims 21 and 22 are added. Basis for claim 21 can be found on page 11, lines 17-25 and for claim 22, on page 14, line 20 through page 15, line 16, in the specification as filed. No new matter is added.

Claims 1-7, 9, 12, 14, 16, 18 and 20-22 are generic to the elected species. Claims 8, 10, 11, 13, and 15, directed to non-elected species of microorganisms, cells or diseases, are indicated as withdrawn, and are retained for possible rejoinder upon allowance of a generic claim.

#### **Traversal of the Requirement for Restriction**

Applicant respectfully traverses the Requirement for Restriction as between Groups I and II for the following reasons.

##### **Groups I and II**

Applicant respectfully requests reconsideration of the Restriction Requirement as between Groups I and II. It respectfully is submitted that Group I claims 1, 3-11 and 16, and Group II claims 2, 12-15, 18 and 20, should be examined together in view of the amendments submitted herewith. Claim 1 of Group I is amended herein to recite a method of administering a detectable microorganism or cell to a subject for whom the presence or absence of a wound, wounded tissue or inflamed tissue or a disease associated therewith is to be detected and monitoring the subject to detect the accumulation of the microorganism or cell at a wound, wounded tissue or inflamed tissue in the subject, whereby, detection of the accumulation indicates the location of the wound, wounded tissue or inflamed tissue. Claim

2 of Group II is amended herein to depend on claim 1, and further defines the microorganism of claim 1, where the microorganism or cell encodes a protein for the therapy of wounded or inflamed tissue or a disease associated therewith. Group II claims 12-15 and 18 depend from claim 2, and Group II claim 20 is amended to depend from claim 1.

Hence, Group I and Group II require the steps of:

administering to a subject for whom the presence or absence of a wound, wounded tissue or inflamed tissue or a disease associated therewith is to be detected, a microorganism or cell, wherein the microorganism or cell is detectable in the subject; and

monitoring the subject to detect the accumulation of the microorganism or cell at a wound, wounded tissue or inflamed tissue in the subject, whereby, detection of the accumulation indicates the location of the wound, wounded tissue or inflamed tissue.

**Disclosure of Contag *et al.***

On page 3, the Office Action states that the technical feature common to the Groups I and II does not contribute over the prior art in view of Contag *et al.* (U.S. Patent No. 6,217,847), which discloses a method comprising administration of a detectable microorganism to a subject and monitoring the subject for detection of the microorganism. Contag *et al.* discloses *in vivo* detection of administered bacteria and viruses that are conjugated to light emitting moieties fused to a targeting agent. Contag *et al.* does not disclose the claimed method of administering a detectable microorganism for the detection of a wound, wounded tissue or inflamed tissue or a disease associated therewith and monitoring the subject for detection of the microorganism or cell, whereby the wounded or inflamed tissue is detected. Therefore, Contag *et al.* does not disclose all elements of claims of either Group I or Group II. Therefore, Groups I and II, as amended herein, share a common technical feature that is novel over Contag *et al.* Applicant, thus, respectfully requests rejoinder of Group I and Group II claims and examination of claims 1-16, 18, 20-21 on the merits.

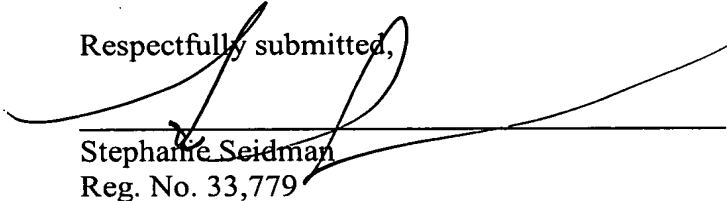
\* \* \*

Applicant : Aladar Szalay *et al.*  
Serial No. : 10/516,785  
Filed : June 27, 2005  
ELECTON AND PRELIMINARY AMENDMENT

Attorney's Docket No.: 17248-004US1/4804US

Entry of this amendment and examination of the application on the merits are respectfully requested.

Respectfully submitted,



Stephanie Seidman  
Reg. No. 33,779

Attorney Docket No. 17248-004US1/4804US

**Address all correspondence to:**

Stephanie Seidman  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5070  
Facsimile: (202) 626-7796  
email: seidman@fr.com